



## EXHIBIT 1

Attachment 9  
Page 7 of 7ALTERNATIVE USES OF  
PROGRAM INCOME

ORIGINAL BASIS \$75,000 Federal Aid \$25,000 State	<u>Deductive</u> use of program income	<u>Additive</u> use of program income
25% Matching funds \$25,000	Program income \$10,000	Program income \$10,000
75% Federal Aid \$75,000	Matching funds: 25% of \$90,000 \$22,500	25% Matching funds \$25,000
	Federal Aid 75% of \$90,000 \$67,500	75% Federal Aid \$75,000



**b. SF-270, Request for Advance or Reimbursement.**

- Line 11a. Enter total costs including those funded with program income.
- Line 11b. Enter program income.
- Attach a statement to identify the source of the income, the number of the project which generated the income, and the amount.

**D. Accounting Records.** The State must maintain records by project which account for receipt and expenditure of program income. Since program income is "project funds," the same records and supporting documents are required for program income as any other project funds. In addition, records must be maintained to identify the source of the income (i.e., sale of timber, agricultural crops, user fees) and the project which produced the income.



- V. Documentation and reporting. Program income is considered Federal funds to the extent of Federal Aid participation in the income producing activity. Therefore, the basic standards for documentation and reporting shall apply to program income as any other Federal Aid funds.

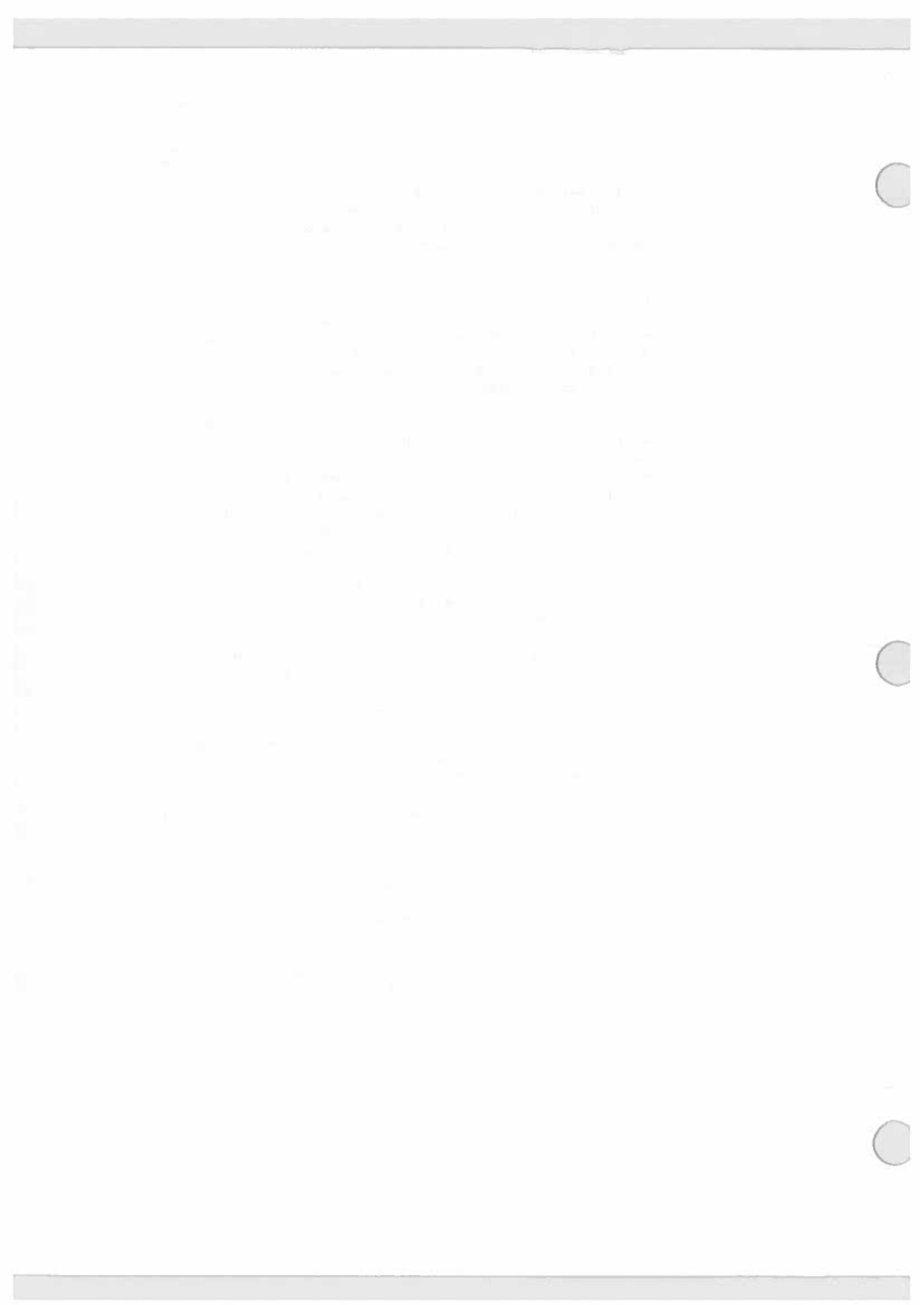
A. Application for Federal Assistance.

1. If planned activities are expected to produce program income, the Program Narrative shall contain a brief statement on the source of the revenue, anticipated amount, and the proposed procedure for use of the income. For example, sale of surplus crops or collection of user fees normally are planned actions and must be indicated in the AFA.
2. If real property is to be sold, an appropriate document (usually an AFA or AFA amendment) must be submitted to the Regional Director for approval prior to that sale.
3. When program income is used to fund a separate "new" project, an AFA must be submitted to describe the work to be done. The AFA must contain the same information and is subject to the same approval requirements as any other Federal Aid project.

B. Project Agreement - See IV.A.

C. Project reporting.

1. Performance reports must include additional work performed with program income.
2. Financial Reports. Regardless of whether the additive or deductive alternative is used, those costs funded with program income must be entered on financial reports. The program income must then be subtracted from the total to arrive at an amount on which the Federal share is calculated. The following are instructions for making these entries.
  - a. Status of Funds and Classification of Amounts Requested.
    - Line 5. Enter total costs including those funded with program income.
    - Line 3. Enter program income.
    - Remarks. Identify the source of the income, the number of the project which generated the income, and the amount. Example: Sale of vehicle, F-1-5, \$1,000.



2. The income may be deducted from the total project costs for the purpose of determining net costs on which the Federal share will be based. (Unless otherwise shown on the Project Agreement, the deductive alternative will be used.)
    - a. The deduction must be applied to the Federal Aid program which produced the income. If the deduction is not feasible in the project segment during the period in which the income was produced, it should be made in the next project segment. However, if the project is closed, the deduction should be applied to an open project segment in the same program.
    - b. If program income is anticipated, the Project Agreement must indicate as a project provision that the deductive alternative will be used, including the source and estimated amount of the program income. For Federal obligation purposes, the Federal share of total project costs may be adjusted to compensate for the program income. This will avoid having unspent balances of your Federal Aid funds when the project segment is closed.
    - c. Under the deductive alternative, program income can not be used to increase total project costs as shown on the Project Agreement.
  3. The use of program income, by either option, must be accomplished within the Project Agreement period in which the income accrues or in the succeeding Project Agreement period. Extensions must be approved by the Regional Office.
- B. Proceeds from sale of property. When real or personal property, acquired or constructed with Federal Aid funds, is sold, the proceeds are treated as program income. In this case, the program income is the net after deducting selling expenses. See Attachment N of A-102 and Chapter 6 of the Federal Aid Manual regarding exceptions and expenses which may be deducted to arrive at net proceeds.
1. The alternative procedures for disposition of program income from sale of property is the same as for general program income. However, the income from sale of real property will normally be handled by the additive procedure.
  2. If there is an unusually large amount of program income, such as from the sale of land, the State may be allowed a reasonable period of time to use the income. Usually, this period will not exceed 3 years. However, since the income will normally accrue interest, the interest must also be treated as program income.





3. Rental or lease payments - The following criteria shall apply in making a determination of whether payments for the use of real property are program income.

- a. Use payments for buildings - Revenue from rental or lease of buildings, such as office space or houses, is program income if the building was acquired, constructed, or maintained with Federal Aid funds. (See Section 11.18.)
- b. Use payments for land - Revenue from rental, lease, or easements is program income if the land was acquired with Federal Aid funds.

B. Proceeds from sale of real or personal property. If real or personal property, acquired or constructed with Federal Aid funds, is sold, the proceeds shall be treated as program income. The State is cautioned that the sale of real property must be approved in advance by the Regional Director.

IV. Disposition of program income. Program income must be returned to the Federal Aid program which produced the income.

A. General program income. The following are the alternative procedures for the disposition of general program income. General program income is gross revenue received. (See Exhibit 1 for an illustration of the alternatives.)

1. The income may be added to total funds committed to the program to accomplish additional eligible activities. This is to result in a larger program than would otherwise be the case. Under this option, the State may:

a. Expand the project from which the income was derived or expand another active project in the same program to fund additional work. The Project Agreement must be amended to cover the additional work. The Amendment to Project Agreement (Form 3-1591) must include:

- (1) A revision of total cost to include the amount of program income added to the project.
- (2) An entry in the reason for amendment to indicate that the revised cost is to accomplish additional work to be funded with program income.
- (3) Appropriate supporting documents if new work is added, i.e., work not previously included in the AFA or Project Agreement.

b. Establish another project in the same program to fund additional work, without reimbursement. Such a project must be documented, approved, and reported in the same manner as any other project.



III. Determination of program income. The determination of whether revenue received by the State is program income, subject to the accounting and disposition requirements of A-102, is dependent on the activity which produced the revenue. If the activity which produced the revenue was supported by Federal Aid funds, the revenue was program income.

A. General program income. The following are examples of general program income.

1. Sale of commodities - Revenue from the sale of commodities is program income if the production of the commodity was a result of an activity funded under a Federal Aid program.
  - a. Revenue from the sale of products of the land such as timber, forage, energy resources, and minerals is program income if the land was acquired with Federal Aid funds. In the case of payments for extraction of subsurface commodities (e.g., oil and gas), the payments are program income only if the subsurface rights were acquired with the land.
  - b. Revenue from the sale of other commodities such as annual agricultural crops is program income if Federal Aid funds were used for the production of the commodity. For example, revenue from the sale of surplus crops is program income if the farming operations were funded under a Federal Aid project. In the case of crop production by sharecropping, the sale of surplus crops by the State is program income if the sharecropping agreement was managed under a Federal Aid project.
2. User fees - Revenue from user fees is program income if the fee is for the use of facilities or services acquired, developed, operated, or maintained with Federal Aid funds. Examples are fees charged for parking, camping, boat launching, use of target ranges and shooting blinds, and daily entry fees.

Excluded is revenue from:

- a. The sale of licenses, permits, etc., required to use public lands in the State. An example is revenue from the sale of Wildlife Management Area Permits required to hunt on WMA's in the State.
- b. Fees paid to concessionaires when those fees are retained by the concessionaire for services provided. However, revenue returned to the State shall be subject to the determination of program income as set forth above.



## APPENDIX II

## GUIDELINES FOR PROGRAM INCOME

- I. General. OMB Circular A-102 provides basic policies for the treatment of program income. The following is a summary of these provisions related to the Federal Aid programs.
- A. Program income is revenue earned by the State as a result of grant supported activities. The State must account for receipt and use of program income.
1. General program income - Includes, but is not limited to, revenue from the sale of commodities, user fees, and rental or lease payments.
  2. Copyright and patent royalties - The State is not accountable for copyright and patent royalties unless specifically required by the Project Agreement. (See Section 6.6.)
  3. Proceeds from sale of property - When property is no longer required for the purpose for which acquired and the property is sold, the income shall be treated as program income.
- B. Program income must be used for approved activities within the same Federal Aid program which generated the income.
- II. Restrictions. The following program restrictions apply to the production of revenue.
- A. Activities which produce revenue (like all activities) must be consistent with the purpose of the Federal Aid project. Income producing activities may not be undertaken if they interfere with the accomplishment of project purposes.
- B. Federal Aid funds shall not be used for the purpose of producing income. However, income producing activities incidental to accomplishment of approved purposes are allowable.
1. Incidental means that the production of income is of secondary or minor importance in the project and is a result of otherwise eligible activities.
  2. If revenue equals or nearly equals the cost of the activity, the activity should not be supported with Federal Aid funds. For example, it would be questionable to use Federal Aid funds for operation of an area or facility when user fees equal or nearly equal the operation costs.



b. **Grantee Financial Management Systems.** In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information, such as audit reports, to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. **Financial Status Reports.**

(1) Federal agencies shall require grantees to use the SF-269, Financial Status Report-Long Form, or SF-269a, Financial Status Report-Short Form, to report the status of funds for all non-construction projects or programs. Federal agencies need not require the Financial Status Report when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category of expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF-269, or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantees's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. **Contracting With Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.** It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

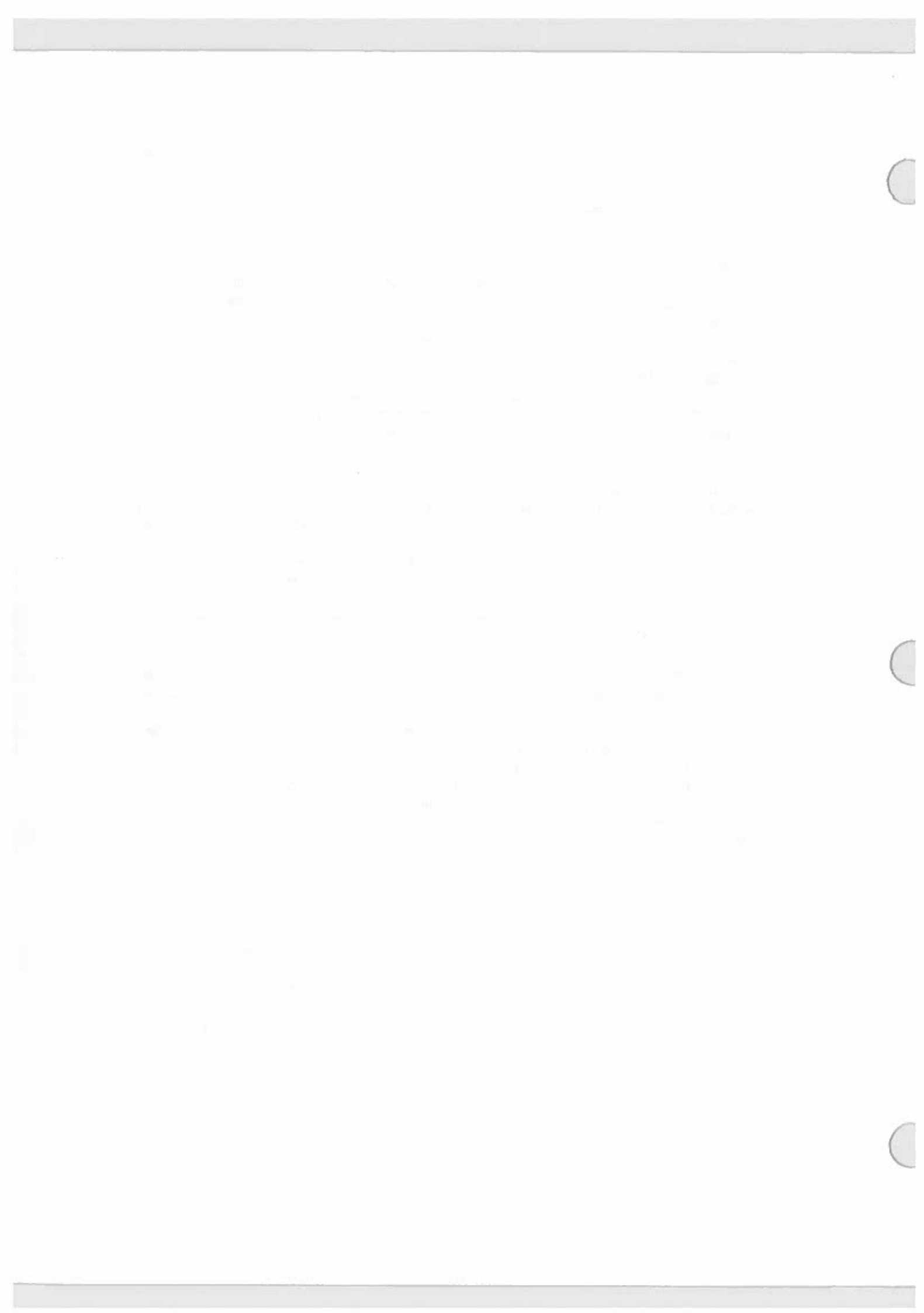
e. **Program Income.**

(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired assets to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the grants management common rule at paragraph \_\_.25 (g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for recipients to follow the other alternatives in paragraph \_\_.25 (g) (2) and (3) shall be granted sparingly.







must be replaced using non-Federal Aid funds. Replacement property must be of equal value at current market prices and with equal benefits as the original property. The State may have a reasonable time, up to three years from the date of notification by the regional director, to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the regional director, the property shall be used or disposed of as provided by Attachment N of OMB Circular A-102.

(c) Federal Aid funds shall not be used for the purpose of producing income. However, income producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities shall be accounted for in the project records and disposed of as directed by the Director.

**§ 80.15 Allowable costs.** *(Revised, See Federal Register/Vol. 66, No. 67/April 6, 2001/Rules and Regulations)*

Allowable costs are limited to those which are necessary and reasonable for accomplishment of approved project purposes, and are in accordance with the cost principles of OMB Circular A-87.

(a) All costs must be supported by source documents or other records as necessary to substantiate the application of funds. Such documentation and records are subject to review by the Secretary to determine the allowability of costs.

(b) Costs incurred prior to the effective date of the project agreement are allowable only when specifically provided for in project agreement.

(c) Projects or facilities designed to include purposes other than those eligible under the pertinent Act shall provide for the allocation of costs among the various purposes. The method used to allocate costs shall produce an equitable distribution of costs based on the relative uses or benefits provided.

(d) Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency must be in accord with an approved cost allocation plan and shall not exceed in any one fiscal year three percentum of the annual apportionment.

(e) Not more than 10 per centum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration Act may be obligated on projects for aquatic education.

[47 FR 22539, May 25, 1982, as amended at 50 FR 21448, May 24, 1985]

**§ 80.16 Federal aid payments.**

Payments shall be made for the Federal share of allowable costs incurred by the State in accomplishing approved projects.

(a) Requests for payments shall be submitted on forms furnished by the regional director.

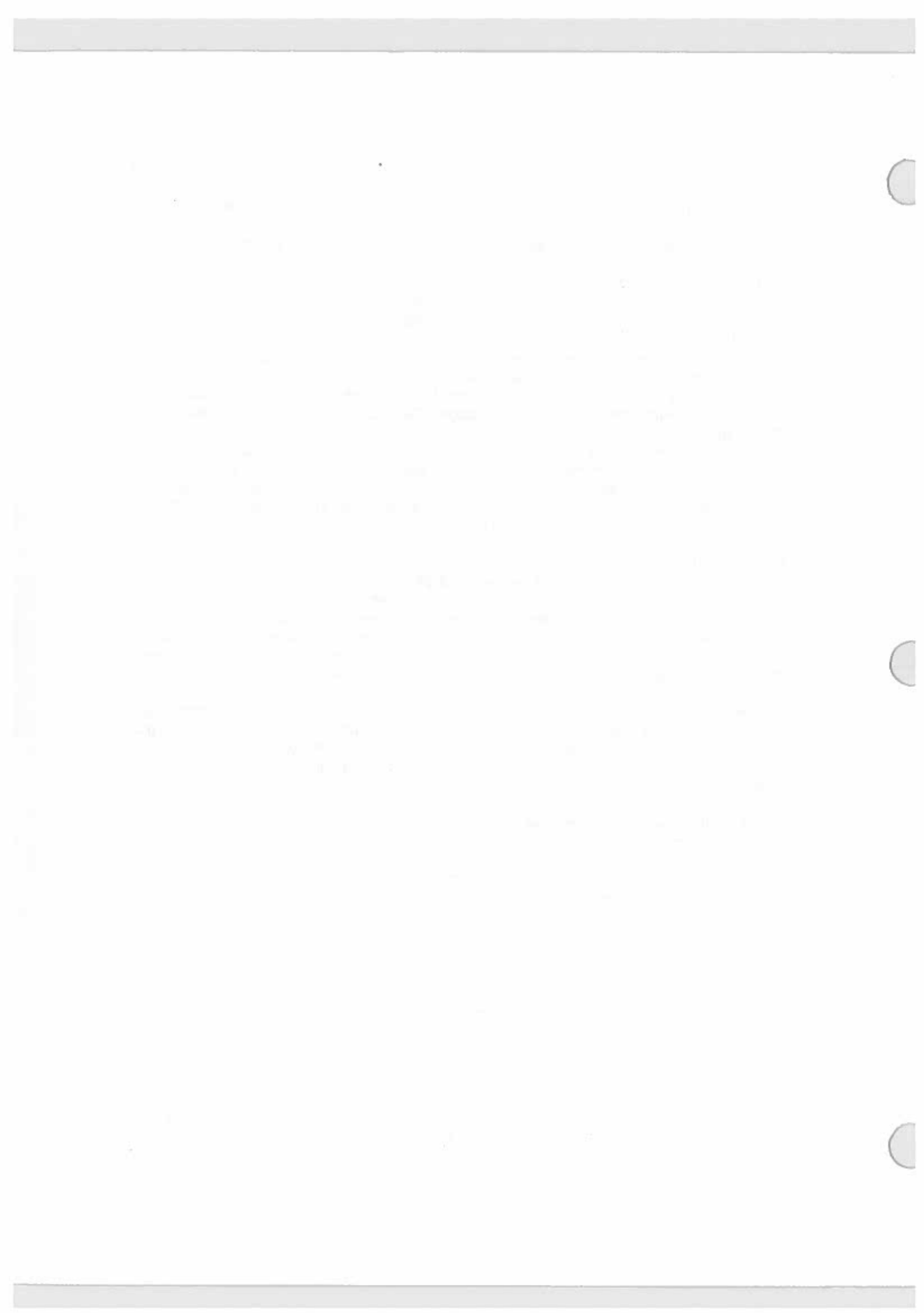
(b) Payments shall be made only to the office or official designated by the State fish and wildlife agency and authorized under the laws of the State to receive public funds for the State.

(c) All payments are subject to final determination of allowability based on audit. Any overpayments made to the State shall be recovered as directed by the region director.

(d) The regional director may withhold payments pending receipt of all required reports or documentation for the project.

**§ 80.17 Maintenance.**

The State is responsible for maintenance of all capital improvements acquired or constructed with Federal Aid funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of



figures which he certifies. Sampling and other statistical techniques may be utilized by the certifying officer for this purpose.

(Approved by the Office of Management and Budget under control number 1018-0007)

**§ 80.11 Submission of proposals.**

A State may make application for use of funds apportioned under the Acts by submitting to the regional director either a comprehensive fish and wildlife management plan or project proposal.

(a) Each application shall contain such information as the regional director may require to determine if the proposed activities are in accordance with Acts, the provisions of this part, and the standards contained in the Federal Aid Manual.

(b) Each application and amendments of scope shall be submitted to the State Clearinghouse as required by Office of Management and Budget (OMB) Circular A-95 and by State Clearinghouse requirements.

(c) Applications must be signed by the director of the State fish and wildlife agency or the official(s) delegated to exercise the authority and responsibilities of the State's director in committing the State to participation under the Acts. The director of each State fish and wildlife agency shall notify the regional director, in writing, of the official(s) authorized to sign Federal Aid documents, and any changes in such authorizations.

**§ 80.12 Cost sharing.**

Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the project agreement, whichever is less, except that the non-Federal cost sharing for the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa shall not exceed 25 percent and may be waived at the discretion of the regional director.

(a) A minimum Federal participation of 10 percent of the estimated costs is required as a condition of approval.

(b) The non-Federal share of project costs may be in the form of cash or in-kind contributions. The allowability and evaluation of in-kind contributions are subject to the policies and standards prescribed in Office of Management and Budget (OMB) Circular A-102.

(c) The non-Federal share of project costs may not be derived from other Federal funds, except as authorized by specific legislation.

**§ 80.13 Substantiality in character and design.**

All projects proposed for funding under the Acts must be substantial in character and design. A substantial project (for fish and wildlife purposes) is one which:

(a) Identifies and describes a need within the purposes of the relevant Act to be utilized;

(b) Identifies the objectives to be accomplished based on the stated need;

(c) Utilizes accepted fish and wildlife conservation and management principles, sound design, and appropriate procedures; and

(d) Will yield benefits which are pertinent to the identified need at a level commensurate with project costs.

**§ 80.14 Application of Federal aid funds.**

(a) Federal Aid funds shall be applied only to activities or purposes approved by the regional director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property



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(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 12.74.)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 12.71 and 12.72.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be

used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 12.66 Non-Federal audit.

(a) Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with





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at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated

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equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in §12.62, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

#### §12.65 Program income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.







Region 7 comment: We recommend adding regulations -- i.e., "Changes in federal regulations and policy that affect a State's ability to generate matching funds in short-term.

Thank you for the opportunity to comment.

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To Joyce Johnson/R2/FWS/DOI@FWS, Mike  
Piccirilli/R4/FWS/DOI, Robert Bryant/R3/FWS/DOI, Tim  
Hess/R7/FWS/DOI@FWS, John Organ/R5/FWS/DOI@FWS,  
Fred Caslick/RO/R1/FWS/DOI, Laura  
Valoppi/SAC/R1/FWS/DOI@FWS, David  
McGillivray/R6/FWS/DOI@FWS, Maribel  
Miller/R7/FWS/DOI@FWS  
cc Pam Matthes/AMBS/R9/FWS/DOI, Tom  
Jeffrey/AMBS/R9/FWS/DOI, Sylvia  
Cabrera/AMBS/R9/FWS/DOI@FWS, Steve  
Leggans/NCTC/R9/FWS/DOI, Thomas  
Barnes/AMBS/R9/FWS/DOI, Lori  
Bennett/AMBS/R9/FWS/DOI, Luther Zachary/R9/FWS/DOI,  
Ord Bargerstock/AMBS/R9/FWS/DOI  
Subject Prog Income Draft Cost Share Guidance

As discussed on today's Chief's call, John Organ developed some draft guidance on when to use the cost share method. Please send your comments to Ord Bargerstock in the next 3 weeks for compilation and we can review the results by the end of the month.



Program Income Cost Share Guidance.doc





Maribel Miller/R7/FWS/DOI  
08/17/2006 05:01 PM

To Jim Greer/AMBS/R9/FWS/DOI@FWS, Ord  
Bargerstock/AMBS/R9/FWS/DOI@FWS  
cc Tim Hess/R7/FWS/DOI@FWS  
bcc  
Subject R7 Comments-Program Income Draft Cost Share Guidance  
□

R7 appreciates John's efforts to provide clearer guidance on when the Service can allow use of program income as match. We understand that it would be an exception rather than the norm for the Division of Federal Assistance to consider (FA) cost sharing as an option.

Our general question is who will make the determination of whether the State's situation fits one or all of the four categories where we will allow the use of program income as cost share? Should the FA Chief make the call as he approves the grant agreement or should the decision rest ultimately with the Regional Director or the Washington Office as recommended by the FA Chief. It seems that the criteria are written (intentionally or unintentionally) to be as flexible as possible. With the flexibility however, comes the challenge of interpretation. Each Region may end up with their own interpretation, causing inconsistencies nationally. Worst case, we may end up asking for a Solicitor's Opinion for every grant proposal with program income as cost share unless we better clarify terms and give examples of situations where the State could legitimately invoke the cost share option.

Specifically, these are our comments on the categories:

**1. State is in serious financial difficulty due to catastrophic events that significantly reduce ability to generate matching funds.**

Region 7 comment: Please define, clarify, and provide examples for the following terms:

"serious financial difficulty" - Who determines? It seems that all States are in some form of financial difficulty.

"catastrophic events" - As declared by Governor? President?

"significantly reduce the ability to generate matching funds" - Please give examples of events that would result in such reduction..

**2. State in risk of reversion due to unusual circumstances not related to internal Program management.**

Region 7 comment: We suggest an example such as: *Redirection of project personnel due to Avian Influenza outbreak in Alaska causing numerous grants to be cancelled and closed, which would result in reversion of funds.*

**3. Federal share of project is minimal.**

Region 7 comment: Define "minimal" We suggest limiting the % to between 10% and 15%. Also, clarify whether we mean "all Federal sources" (includes other Federal funds from other Divisions in U.S Fish & Wildlife Service as well as other Federal agencies) or only "FA Federal share."

**4. Changes in federal policy that affect a State's ability to generate matching funds in short-term.**

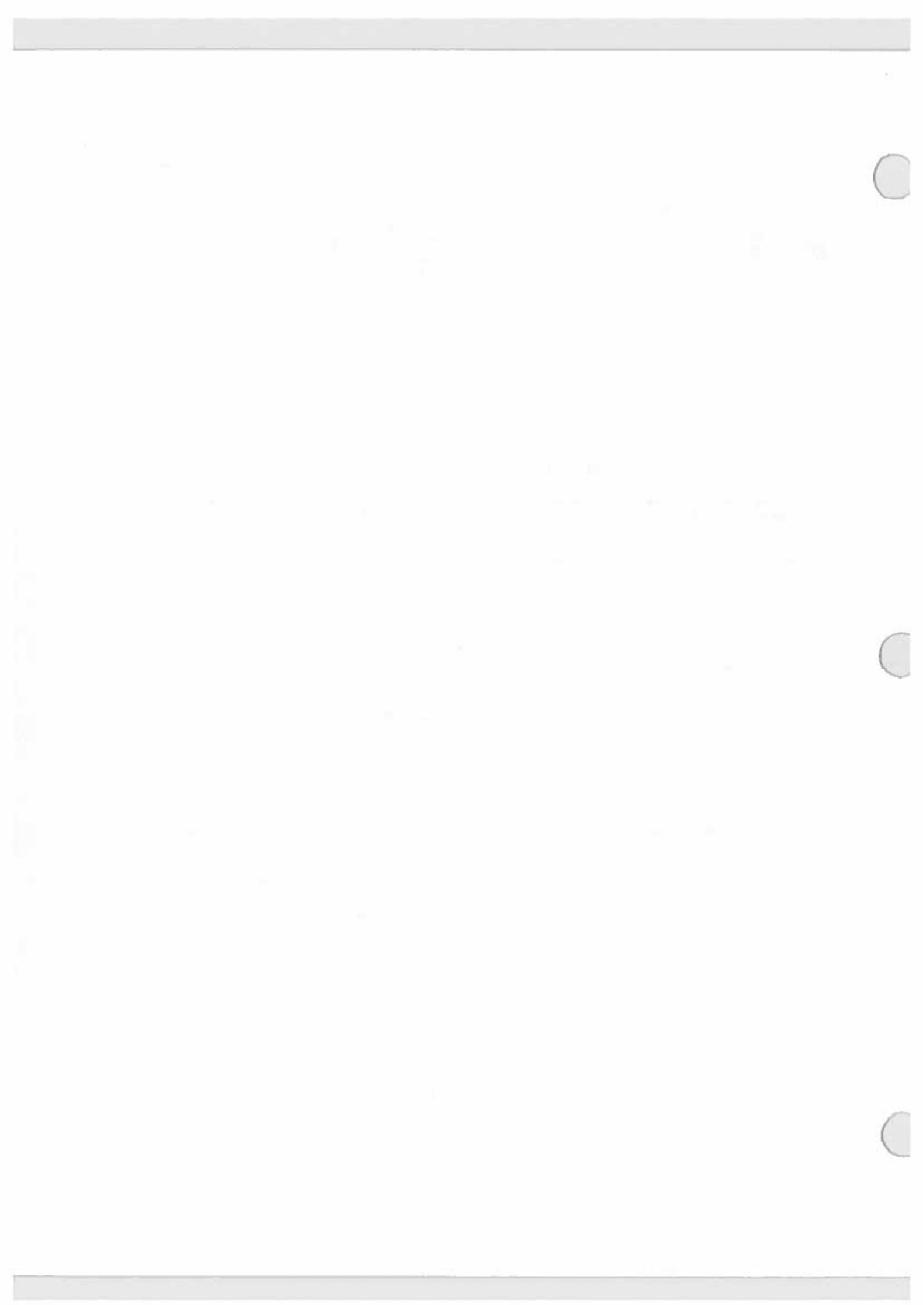


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cc Pam Matthes/AMBS/R9/FWS/DOI, Tom  
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Leggans/NCTC/R9/FWS/DOI, Thomas  
Barnes/AMBS/R9/FWS/DOI, Lori  
Bennett/AMBS/R9/FWS/DOI, Luther Zachary/R9/FWS/DOI,  
Ord Bargerstock/AMBS/R9/FWS/DOI  
Subject Prog Income Draft Cost Share Guidance

As discussed on today's Chief's call, John Organ developed some draft guidance on when to use the cost share method. Please send your comments to Ord Bargerstock in the next 3 weeks for compilation and we can review the results by the end of the month.



Program Income Cost Share Guidance.doc





Mike Piccirilli/R4/FWS/DOI  
08/04/2006 08:50 AM

To Jim Greer/AMBS/R9/FWS/DOI@FWS, Ord  
Bargerstock/AMBS/R9/FWS/DOI@FWS, John  
Organ/R5/FWS/DOI@FWS  
cc Fred Caslick/RO/R1/FWS/DOI@FWS, Joyce  
Johnson/R2/FWS/DOI@FWS, Robert  
Bryant/R3/FWS/DOI@FWS, David  
McGillivray/R6/FWS/DOI@FWS, Tim  
Hess/R7/FWS/DOI@FWS, Laura  
Valoppi/SAC/R1/FWS/DOI@FWS, Emily Jo  
Williams/R4/FWS/DOI@FWS

bcc

Subject Re: Prog Income Draft Cost Share Guidance

John/Ord:

I agree we need this guidance and feel it is well written and will benefit our administration of the grant program. We have had some very strong cases to use the cost share method within the past year by states who were impacted from hurricanes. Following are a few of my comments and concerns for consideration in development of the final guidance all of which pertain to

**Appropriate Application of Cost Share Method**

We may want to reconsider the statement "A paramount consideration is whether application of the cost share method would violate the intent and integrity of the Program through the purposeful generation of income or by essentially funding a project with 100% federal funds". Many of the states choose to claim ownership to a percent of the Program Income based on the cost share rate it was earned in the grant (i.e 75% Federal 25% state).

I think that both of the considerations below

State is in serious financial difficulty due to catastrophic events that significantly reduce ability to generate matching funds.

State in risk of reversion due to unusual circumstances not related to internal Program management.

leave a great deal of discretion and would benefit if we identify a specific trigger that would authorize, or more clearly support the use of cost share such as when a states annual license sales falls x % below it's historical 15 year average license sales, or implement something similar to the SFR requirement to maintain 1988 baselevel funding.

We probably should identify a time limit and or dollar amount based on historical apportionments. A few of our coordinators expressed concern that if State Directors become confident and successful in the use of cost share as a method to match federal funds the individual Wildlife and Sportfish state budgets would be proportionally reduced for an indefinite time

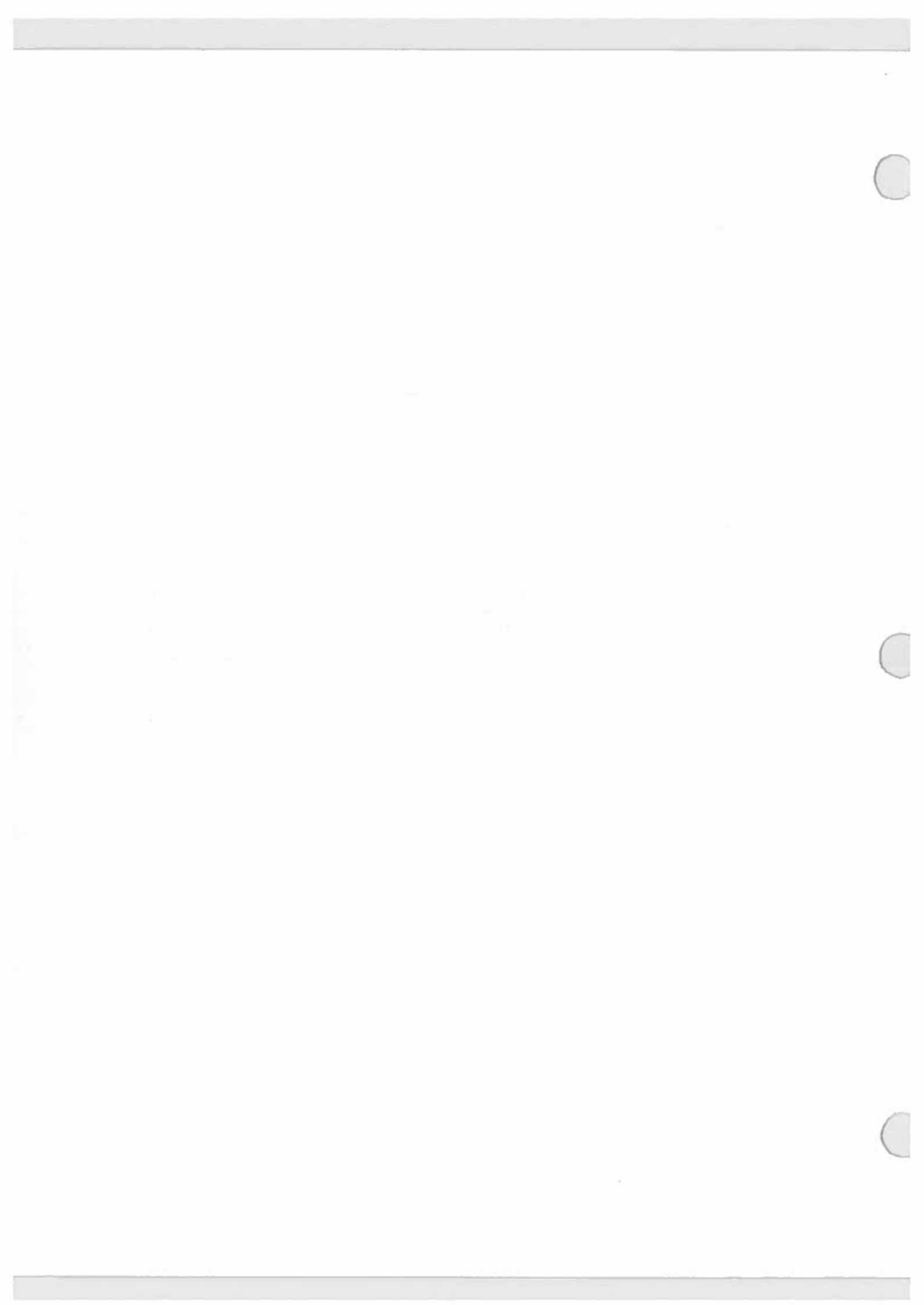
Mike

Jim Greer/AMBS/R9/FWS/DOI

Jim  
Greer/AMBS/R9/FWS/DOI  
08/03/2006 04:09 PM

To Joyce Johnson/R2/FWS/DOI@FWS, Mike  
Piccirilli/R4/FWS/DOI, Robert Bryant/R3/FWS/DOI, Tim  
Hess/R7/FWS/DOI@FWS, John Organ/R5/FWS/DOI@FWS,  
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Jim  
Greer/AMBS/R9/FWS/DOI  
09/13/2006 02:00 PM

To Ord Bargerstock/AMBS/R9/FWS/DOI  
cc  
bcc  
Subject Fw: Cost-Share Method

Where are you on this?

— Forwarded by Jim Greer/AMBS/R9/FWS/DOI on 09/13/2006 02:02 PM —

Fred Caslick/RO/R1/FWS/DOI

09/07/2006 06:38 PM

To Jim Greer/AMBS/R9/FWS/DOI@FWS, John  
Organ/R5/FWS/DOI@FWS  
cc  
Subject Cost-Share Method

Jim and John,

Thanks John for pulling this information together and bringing it into the open air where it can be acted on. Acting as Johnnie-come-lately, Jay and I have reviewed the Guidance and would offer a consideration for a more defined process and a stronger Service role in approving the use of this method, e.g. case by case consideration using a written request from the state to DC through the region. This process has drawbacks but might aid in the development of consistency within the program in the application of the exemptions—although it does require amending DO 168. One drawback to citing acceptable factors in a DO is new ones will come along. Putting an acceptable review process in place with some examples of acceptable factors might add some staying power to the guidance.

I suspect the aforementioned alternative has been discussed and I may be missing something BIG here?



### **Joint Federal/State Task Force Guidance**

The JTF, in a memorandum dated December 12, 2003 transmitting DO 168 to the Service Director and AFWA Executive Vice President, noted that the new policy would allow use of the cost share method *"only when the Service deems appropriate based on appropriate considerations, as described in the recommendation. The JTF notes that the regulations provide for considerable flexibility, and that this is very much a statement of policy."*

Examples of acceptable factors where income incidental to accomplishment of grant objectives could be disposed of using the cost share method were developed by the JTF:

- (1) Allow the State share of funds to be used on additional fish or wildlife related projects that otherwise could not be sufficiently funded;
- (2) Allow State's Federal Assistance funds saved by using this method to be targeted for additional qualified Program activities; or
- (3) Results in a net benefit to the Program.

### **Appropriate Application of Cost Share Method**

As specified in DO 168 and the JTF memorandum, the cost share method should only be applied for disposal of program income under certain circumstances deemed appropriate by the Service based on appropriate considerations. A paramount consideration is whether application of the cost share method would violate the intent and integrity of the Program through the purposeful generation of income or by essentially funding a project with 100% federal funds. Circumstances where cost share method could be applied, if consistent with the above considerations, include:

- State is in serious financial difficulty due to catastrophic events that significantly reduce ability to generate matching funds.
- State in risk of reversion due to unusual circumstances not related to internal Program management.
- Federal share of project is minimal.
- Changes in federal policy that affect a State's ability to generate matching funds in short-term.



## Program Income

### Guidance for Application of Cost-Share Method to Federal Assistance Grants

Director's Order 168, *Program Income from Federal Assistance Grants*, was signed by the Director on March 11, 2004. Prior to issuance of DO 168, guidance for program income on Federal Assistance grants was contained in Appendix II of the Federal Aid Manual, *Guidelines for Program Income*. Appendix II guidelines mandated that disposition of program income must be done either by the additive or deductive methods. Common rule regulations (43 CFR Part 12.65) provide for a third disposition method: cost sharing. DO 168 departs from the Appendix II guidance by allowing use of the cost share method under certain circumstances deemed appropriate by the Fish and Wildlife Service. The Service must make the final decision on allowability of the cost share method based on a variety of factors related to the intent of the Wildlife and Sport Fish Restoration Programs.

#### **Background**

The cost share method was designed to provide incentives to encourage participation by under-represented groups or communities in existing programs. For example, a grant program may experience difficulty in delivery because potential grantees may not be willing to assume risks in providing services in certain sectors. The cost share method would provide incentive by allowing grantees to use income under the grant to defray required matching share. Confusion in current guidance is the result of seemingly conflicting guidance in financial management rules and PR/DJ program rules. Guidance under 43 CFR 12.65 explicitly states "Grantees are encouraged to earn income to defray program costs." Program rules (50 CFR 80.14c) specifically prohibit using Wildlife and Sport Fish Restoration funds to generate additional revenue, unless incidental to accomplishment of grant objectives.

Congress, as clearly indicated in the legislative history of the Program, intended for States and the federal government to each contribute financial resources in a truly cooperative effort. Senator Key Pittman stated the following in hearings leading up to passage of the Pittman-Robertson Wildlife Restoration Act:

*"The State and Federal Government will jointly pay the cost of these wildlife restoration projects."* [Congressional Record July 6, 1937]

*"The plan is to utilize the fund raised from the tax upon guns, shells, ammunition, in connection with a fund raised in the States from the issuance of licenses for hunting and fishing."* [Congressional Record August 7, 1937]

These inherent conflicts, and the fact that Wildlife and Sport Fish Restoration has full representation and participation, were the reasons why cost share had not previously been allowed for Federal Assistance grants.



**FISH AND WILDLIFE SERVICE  
STATE GRANTS**

Attachment 1  
Page 2 of 2

**State Grants**

**Part 522 Federal Aid Program Guidance**

**Chapter 19 Program Income from Federal Assistance Grants**

**522 FW 19**

A. If a State fish and wildlife agency wants to use the deduction or addition methods, we will authorize such use.

B. If a State fish and wildlife agency wants to use the cost sharing method of applying program income to the outlays, we must review the reasoning provided by the State and make the final decision based on a variety of factors related to the intent of the Wildlife and Sport Fish Restoration Programs. Examples of acceptable factors might include situations where program income is incidental to the accomplishments of the approved purposes of the grant, and would:

(1) Allow using the State share of funds on additional fish or wildlife related projects that otherwise could not be sufficiently funded;

(2) Allow targeting the State's Federal Assistance funds saved by using this method for additional qualified program activities; or

(3) Result in a net benefit to the program.

**19.8 What may a State do with program income if it exceeds the amount that can be applied to the grant from which it was earned? If more program income is generated by the grantee during the grant period than can be deducted, added, or applied to meeting cost sharing requirements, then that excess program income balance may be applied, as appropriate, to a subsequent grant that has purposes consistent with the grant that generated the excess program income.**

**19.9 How does the Service handle income generated outside the grant period?**

A. We require grant agreements to include specific language that income the grantee generates outside of the grant period from Federal Assistance supported acquisitions or other activities will either be:

(1) Treated as license revenue and used to support the administration of the State fish and wildlife agency, or,

(2) If the State so requests, used as additional funding for purposes consistent with the grant or the program that generated the income.

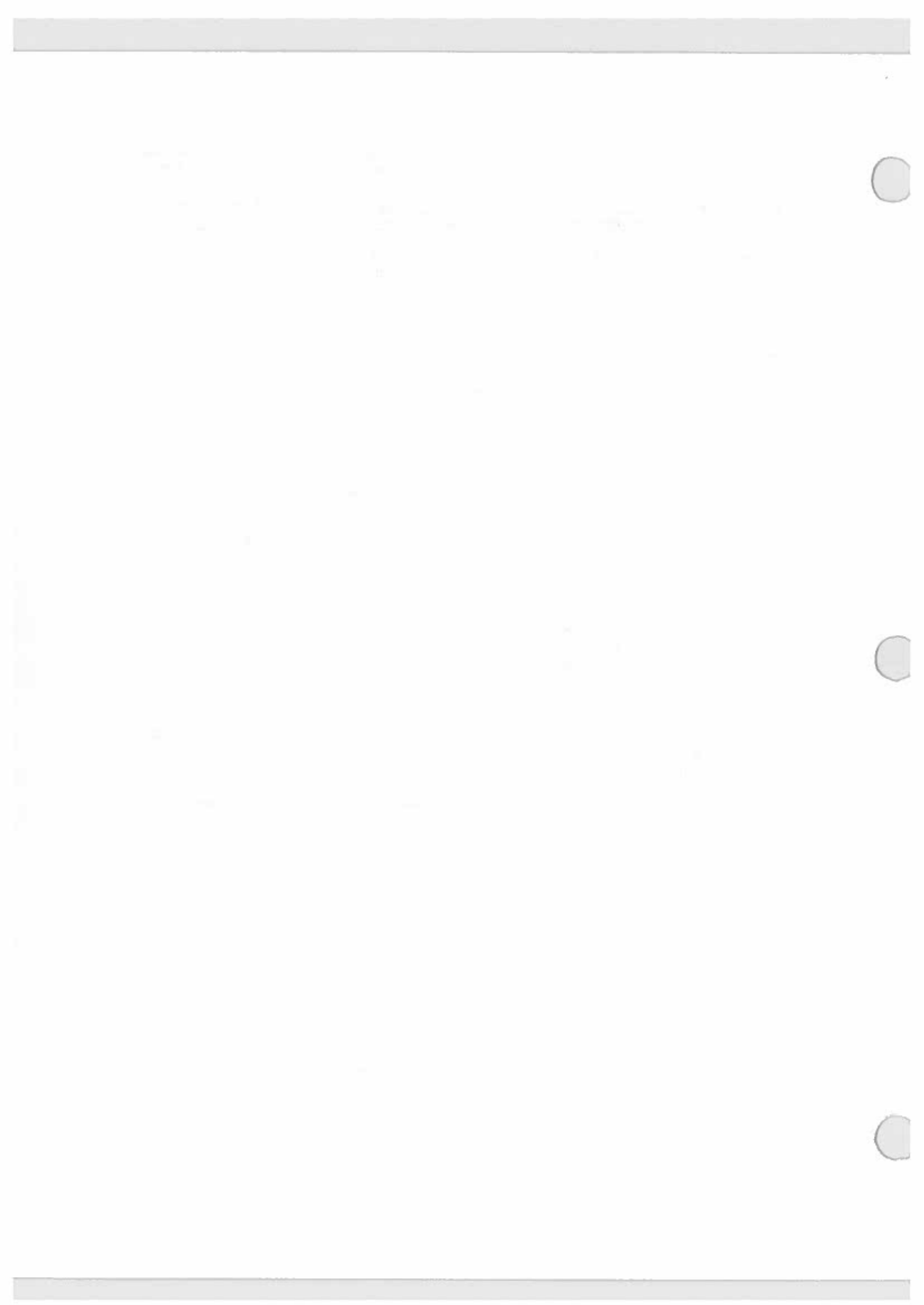
B. For existing grant agreements that do not contain specific language regarding the disposition of income outside the grant period, income generated by the grantee outside of the grant period is to be treated as if it were license revenue. The grantee may request the Service include specific language in the grant agreement requiring the grantee to account for income generated by a subgrantee outside of the grant period. Absent this language, the requirement will be in place only if the grantee chooses to include it in the award to the subgrantee. However, the grantee and subgrantee may enter into subsequent contractual agreements that require accounting of income generated outside the grant period in order to comply with separate obligations (e.g., maintenance of a facility during its useful life, oversight of allowable commercial activities, etc.).

  
Deputy  
DIRECTOR

Date: 12.19.05

STATE GRANTS





**FISH AND WILDLIFE SERVICE  
STATE GRANTS**

Attachment 1  
Page 1 of 2

<b>State Grants</b>	<b>Part 522 Federal Aid Program Guidance</b>
<b>Chapter 19 Program Income from Federal Assistance Grants</b>	<b>522 FW 19</b>

**19.1 What is the purpose of this chapter?** This chapter provides guidance on what constitutes program income and how we require State fish and wildlife agencies to calculate and use program income generated by Federal Assistance grants funded under the Wildlife and Sport Fish Restoration Programs.

**19.2 What is the scope of this chapter?** This chapter applies to all Service personnel who administer grants funded through the Wildlife and Sport Fish Restoration Programs.

**19.3 What are the authorities for taking this action?**

A. Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777).

B. Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669).

C. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments Post-Award Requirements, Program Income (43 CFR 12.65).

D. Administrative Requirements of the Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts, Application of Federal Aid Funds (50 CFR 80.14(c)).

**19.4 What is the definition of program income?** The program income regulations in 43 CFR 12.65(b) define program income as "...gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report." To be considered program income, the grantee or a subgrantee must receive the income. Occasionally people other than the State or subgrantee may use a facility that is funded by Federal Assistance grants for activities that generate income. Only the portion of the income that is returned to the State or subgrantee in the form of agreed-upon rental or other fees is considered Program Income and is subject to Federal oversight. Exhibit 1 provides a partial list of what we may consider program income. We intend for you to use the list to help prompt discussion during the development of the grant agreement.

**19.5 Are activities that produce program income allowable under Federal Assistance grants?** Yes, we allow the activities if they are incidental to the accomplishment of approved grant purposes.

**19.6 Should "net" or "gross" income be used when calculating program income?** 43 CFR 12.65(b) defines program income as "gross" income. However, 43 CFR 12.65(c) provides that, "If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income." Therefore, States may include a provision in the grant agreement that allows program income to be reduced by an amount equal to costs incident to the generation of the program income. The grant agreement should identify these costs. Exhibit 2 provides some examples of costs that may be deducted and costs that may not be deducted from gross income when calculating program income. We also developed Exhibit 2 to help prompt discussion during the development of the grant agreement. If the grantee does not specify in the grant agreement how they will calculate program income, we will calculate it by making "gross" income equal to program income.

**19.7 How may the State use program income?** 43 CFR 12.65(g) identifies three methods (deduction, addition, and cost sharing or matching) for applying program income to Federal and non-Federal outlays. All three methods are acceptable. However, if the State fish and wildlife agency wants to use any method other than deduction, we require it to identify the method in the grant agreement.



### Attachment Table of Contents

Attachment 1 .....	USFWS Service Manual 522 FW 19
Attachment 2 .....	Region 5 Draft Cost Sharing Guidance
Attachment 3 .....	Region 1 Comments on Region 5's Draft Cost Sharing Guidance
Attachment 4 .....	Region 4 Comments on Region 5's Draft Cost Sharing Guidance
Attachment 5 .....	Region 7 Comments on Region 5's Draft Cost Sharing Guidance
Attachment 6 .....	43 CFR 12.65
Attachment 7 .....	50 CFR 80.14
Attachment 8 .....	OMB Circular A-102 2. Post Award Policies e. Program Income
Attachment 9 .....	Federal Assistance Handbook on Program Income



**Discussion Goals:**

The goals of the discussion are to:

- (1) come to a consensus definition on the appropriate use of the cost sharing method;
- (2) develop guidance and criteria to assist FA and the grantees in applying the cost share method;
- (3) assign the responsibility to edit the existing handbook (see Attachment 9) or develop a new handbook on program income incorporating the definition, guidance and criteria that is agreed upon;
- (4) decide if the definition, guidance and criteria should be incorporated into the manual or if it should remain in the handbook.



that generate program income solely as a result of an approved project that meets the criteria of the WR and SFR programs without the intension of being an income producing activity, or *incidentally*, are allowable. The onus would be on the grantee who wished to use the cost sharing method to demonstrate that the intention of the grant was for restoration purposes and not to generate program income. FA would be held to additional due diligence in scrutinizing any grant application requesting the use of the cost share method to assure that the projects meet the objectives of the Programs and the income produced is *incidental*.

- (2) Grant funded solely by program income and federal funds would have no state share. State share is only calculated when using the deduction method and is based on the amount of state funds contributed.
- (3) Although 43 CFR allows for the use of three methods of applying program income, OMB Circular A-102 (see Attachment 8) states that authorization for grantees to apply the alternatives to the deduction method *shall be granted sparingly*.
- (4) 522FW19 does not set criteria for using the cost sharing method. It only gives 3 examples in which the cost sharing method may be appropriate.
- (5) Region 5 draft guidance provides a good historical background on why the cost sharing method has until recently been prohibited. It also provides a convincing argument for using the cost sharing method sparingly.
- (6) The WO opinion is that the cost sharing method should be reserved for *extraordinary* events or circumstances which would be **both** unusual in nature **and** infrequent in occurrence much like the GAAP definitions. Unusual in nature is an event or circumstance that is highly abnormal and clearly not related to the usual practices, events or circumstances of the grantee considering the environment in which the grantee operates. Infrequent in occurrence is an event that would not reasonably be expected to recur in the foreseeable future considering the environment in which the grantee operates.
- (7) More precise standards should be discussed and developed at the October chiefs meeting based on the 3 examples given in 522FW19. The 3 examples should be defined and based on those definitions, specific criteria as to when the cost sharing method can be used should be developed. The criteria developed should be tied to the 3 examples.





- (2) *Allow targeting the State's Federal Assistance funds saved by using this method for additional qualified program activities; or*
- (3) *Result in a net benefit to the program.*

Region 5 noticed that the lack of guidance in 522FW19 and prepared a draft guidance on the use of the cost sharing method. The Region sent the guidance to the Washington office (WO) (see Attachment 2). On August 3, 2006, the WO sent the document out to all the regions soliciting comments. The general consensus of the regions was that FA should develop guidance and criteria for approving the use of the cost sharing method.

**Region 5 Suggested Guidance:**

States could use the cost sharing method if:

- (1) State is in serious financial difficulty due to catastrophic events that significantly reduce ability to generate matching funds.
- (2) State in risk of reversion due to unusual circumstances not related to internal Program management.
- (3) Federal share of project is minimal.
- (4) Changes in federal policy that affect a State's ability to generate matching funds in short-term.

**General Comments from R1, R4, and R7 on R5 Suggested Guidance:** (see Attachments 3, 4 & 5)

- (1) Grants would not necessarily be funded with 100% federal funds just because program income is used as match if the portion of the match is considered state share based on the state federal split. [R4]
- (2) Bullet points should be further defined, clarified and more specific criteria should be added to help in the decision process. [R4 & R7]
- (3) The process should be more defined and WO should have a greater role. [R1]

**WO Comments:**

- (1) Although there are two regulations on program income, 43 CFR 12.65 (see attachment 6) and 50 CFR 80.14c (see Attachment 7) are not necessarily conflicting regulations. 43 CFR allows for and encourages the generation of program income. 50 CFR states that *income producing activities incidental to the accomplishment of approved purposes are allowable*. This seems to indicate that grants for the purposes of generating program income are unallowable, but grants



**Discussion Paper**  
**on**  
**The Appropriate Use of the Cost Sharing Method**  
**prepared for**  
**The October 2006 Federal Assistance Chiefs Meeting**

**Purpose:**

The purpose of this paper is to provide a basis for discussion on the appropriate use of the *cost sharing or matching* (cost sharing) method of applying program income.

**Issue:**

Guidance in USFWS Service Manual 522 FW 19 (522FW19) (see Attachment 1) concerning the application of program income with regards to the cost sharing method is vague.

**Background:**


Program income is defined in 43 CFR 12.65(b) as *gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period*. The CFR allows for three methods for applying program income: deduction, addition, and cost sharing. It further states that the deduction method is the preferred method of applying program income and the only method available to apply unanticipated program income. If the federal agency authorizes, the CFR allows for the addition and cost sharing methods to be used. Federal Assistance (FA) has historically allowed the use of either the deduction or addition methods, and has prohibited the use of the cost sharing method.

On March 11, 2004, Director's Order 168 (DO168), *Program Income from Federal Assistance Grants*, was signed which, among other things, changed FA's position by offering an avenue to use the cost sharing method of applying program income. On December 19, 2005, DO168 was incorporated into and superceded by 522FW19.

Through 522FW19, FA now allows the using the cost share method provided that we *review the reasoning provided by the State and make the final decision based on a variety of factors related to the intent of the Wildlife and Sport Fish Restoration Programs*. It goes on to outline three examples where the cost share method may be appropriate:

- (1) *Allow using the State share of funds on additional fish or wildlife related projects that otherwise could not be sufficiently funded;*





Cost Sharing Method  
for  
Program Income